

**OPINION
49-64**

July 16, 1949 (OPINION)

FEES

RE: No Filing Fee for Determination of Inheritance Tax

Re: Section 27-0740 1947 Supplement.

Your letter of July 14, 1949, has been received and sent to my desk.

I understand the general rule to be that no fee is chargeable by any county officer for any official act performed by him, unless the statute expressly provides for such fee, and courts have held that the charging of an illegal fee is ground for the removal of the officer.

The fees to be charged by the county court are those provided by section 27-0740 of the 1947 Supplement. These fees are limited to a seven dollar and fifty cent fee for filing "petition for letters testamentary, of administration, or of guardianship." The determination of liability for estate tax as provided by section 57-3727 N.D.R.C. 1943, or the amended section as found in chapter 339 of the 1949 Session Laws, calls for neither letters testamentary, letters of administration, or letters of guardianship, and since the Legislature has not deemed it advisable to specifically provide for a fee for this action by the county court, it is my opinion that no fee is chargeable. Certainly, the determination of the tax liability as provided by this section is a small matter compared with the matter of the administration of an estate or a guardianship. There appears to be a provision under chapter 339 of the 1949 Session Laws for the appointment of an administrator under certain circumstances. If an administrator is appointed, it would be my opinion that the fee of seven dollars and fifty cents would be applicable, since no administrator could be appointed unless a petition were filed therefor, which would make section 27-0740 operative.

WALLACE E. WARNER

Attorney General